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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MARCHELL NORRIS, Derivatively on Behalf
of ALPHATEC HOLDINGS, INC.,

Plaintiff,

vs.

MORTIMER BERKOWITZ, III, JOHN H.
FOSTER, R. IAN MOLSON, STEPHEN E.
O'NEIL, STEPHEN H. HOCHSCHULER,
JAMES R. GLYNN, ROHIT M. DESAI, DIRK
KUYPER, SIRI S. MARSHALL, PETER C.
WULFF, HEALTHPOINTCAPITAL, LLC,
HEALTHPOINTCAPITAL PARTNERS, LP,
and HEALTHPOINTCAPITAL PARTNERS II,
LP,

Defendants,

-and-

ALPHATEC HOLDINGS, INC., a Delaware
corporation,

Nominal Defendant.

Case No. '10CV2477 LAB POR

**VERIFIED SHAREHOLDER
DERIVATIVE COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiff Marchell Norris ("Plaintiff"), by the undersigned attorneys, submits this Verified
2 Shareholder Derivative Complaint (the "Complaint") against the defendants named herein, and
3 alleges upon personal knowledge with respect to himself, and upon information and belief based
4 upon, *inter alia*, a review of public filings, press releases and reports, and an investigation
5 undertaken by Plaintiff's counsel, as to all other allegations herein, as follows.

6 **NATURE AND SUMMARY OF THE ACTION**

7 1. This is a shareholder's derivative action brought for the benefit of nominal
8 defendant Alphatec Holdings, Inc. ("Alphatec" or the "Company") against certain executive
9 officers and members of its Board of Directors (the "Board"), referred to herein collectively as
10 "Individual Defendants" (as defined below), as well as certain other related entities, seeking to
11 remedy defendants' breaches of fiduciary duties, unjust enrichment, filing of false proxy statements
12 in violation of Section 14(a) of the Securities Exchange Act of 1934 ("Section 14(a)," or "§14(a)"),
13 and other violations of law that have caused the Company to sustain damages. The action arises
14 from the conduct of the Individual Defendants and the Company's controlling shareholder to
15 unreasonably cause the Company to acquire Scient'x, S.A. ("Scient'x") against the Company's
16 best interests, to issue false and misleading statements, and to unfairly and unjustly receive millions
17 in proceeds from a public stock offering.

18 2. Nominal Defendant Alphatec, through its wholly owned subsidiary, Alphatec Spine,
19 Inc., engages in the design, development, manufacture, and marketing of products for the surgical
20 treatment of spine disorders, focusing primarily on the aging spine. As a publicly traded company
21 whose common stock was, and is, registered with the U.S. Securities and Exchange Commission
22 ("SEC") pursuant to the Exchange Act, and was, and is, traded on the NASDAQ Global Market
23 ("NASDAQ") under the ticker symbol "ATEC", and governed by federal securities laws, Alphatec
24 had a duty to disseminate accurate and truthful information with respect to its financial condition
25 and performance, growth, operations, financial statements, business, products, markets,
26 management, earnings and present and future business prospects, so that the market price of
27 Alphatec's common stock would be based upon truthful and accurate information. Defendants'
28 misrepresentations and omissions during the relevant period violated these specific requirements

1 and obligations and allowed certain of them to sell the Company's common stock at artificially
2 inflated prices.

3 3. Alphatec has grown over the last several years from revenues of \$80 million in 2007
4 and \$101 million in 2008 to \$132 million in 2009. Despite this growth, Alphatec has, on occasion,
5 lacked growth capital, and to support operations has relied upon controlling shareholder
6 Healthpoint Capital, LLC, which is the ultimate parent of HealthpointCapital Partners, L.P. and
7 HealthpointCapital Partners II, L.P. (collectively with Healthpoint Capital, LLC,
8 "HealthpointCapital" or the "HealthpointCapital Defendants"), for infusions of capital. For
9 example, in June 2009, Alphatec turned to HealthpointCapital for \$10 million in private placement
10 financing. HealthpointCapital currently owns and controls approximately 38% of Alphatec's
11 outstanding shares, and at times has owned a majority of the Company's outstanding shares.

12 4. For several years prior to 2010, HealthpointCapital also owned a controlling interest
13 in Scient'x, another spinal products company based in France. HealthpointCapital first acquired an
14 interest in Scient'x in June 2004, when it paid \$28 million for a 33% interest, based on its valuation
15 of Scient'x at approximately \$85 million. HealthpointCapital purchased an additional 61% interest
16 in Scient'x in November 2007, paying \$111 million, based on a valuation of the enterprise at that
17 time at approximately \$185 million. Thus, based on these two transactions, HealthpointCapital's
18 total cash outlay to buy a 94% interest in Scient'x was \$139 million.

19 5. By late 2009, HealthpointCapital was interested in divesting itself of Scient'x, even
20 at a loss, and it turned to Alphatec, which HealthpointCapital also controlled, as a potential
21 purchaser of Scient'x. Such a transaction could allow HealthpointCapital to partly limit its
22 liabilities and escape its investment in Scient'x, and recover some of its cash investment. In the
23 latter part of 2009, Defendant Mortimer Berkowitz, HealthpointCapital's President and Managing
24 Director, and Chairman of Alphatec's Board, along with four other interested directors of the
25 Company, began to devise a transaction whereby Alphatec would acquire Scient'x.

26 6. On December 17, 2009, Alphatec and HealthpointCapital announced that Alphatec
27 would acquire Scient'x by issuing HealthpointCapital 24 million shares of Alphatec common stock,
28 worth approximately \$120 million (the "Acquisition").

1 7. As a result of the Company's announcement, the Company's shares rose 8%. In
2 reality, the revenue and income projections (the "Projections") contained in the Company's
3 December 17, 2009 press release were designed to offset or omit the truth behind the deal's
4 negatives in order to increase interest in the Company's stock and a possible future public offering.
5 Fundamental information that was omitted from the Projections regarding the propriety of the
6 Acquisition included the fact that both Alphatec and Scient'x were losing money, and that Alphatec
7 faced the likelihood that any integration of Scient'x would drain its available cash and limit its
8 planned crossover to profitability.

9 8. Since five of the Company's nine directors are affiliated with HealthpointCapital,
10 the Board's approval of the transaction was certain, despite the effect the Acquisition would have
11 on Alphatec. However, despite HealthpointCapital's control and domination of Alphatec through
12 the interested and affiliated directors that served on Alphatec's Board, both HealthpointCapital and
13 the Board of Alphatec needed shareholder approval to ensure that the Acquisition would occur. To
14 that end, the defendants issued the false and misleading Projections for both Alphatec and Scient'x,
15 as well as false and misleading proxy statements filed with the SEC on December 18, 2009,
16 December 22, 2009, and February 12, 2010, respectively (the "Proxy Statements") and
17 disseminated to Company shareholders. These misleading Projections, and the information in the
18 Proxy Statements, were not based in fact, but created the necessary shareholder support to approve
19 the Acquisition and boost the Company's stock price.

20 9. As well, the Company's Proxy Statements disseminated in connection with the
21 Acquisition recommended that shareholders vote in favor of the issuance of stock to complete the
22 Acquisition, claiming that the Acquisition was approved by a Special Committee of the Board and
23 that the Acquisition was in the best interests of the shareholders. The recommendations contained
24 in the Proxy Statements were false and misleading because they were made despite the assertion of
25 improper earnings guidance that claimed that: "the Company expects 2010 pro forma full-year
26 revenues to be in a range of \$220 million to \$225 million, and pro forma full-year 2010 adjusted
27 EBITDA to be in a range of \$32 million to \$35 million," which defendants knew were
28 unachievable.

1 10. On March 26, 2010, the Company completed the acquisition of Scient'x, and the
2 transaction ultimately increased HealthpointCapital's control and ownership of the Company from
3 37% to 56%. As a result of the Acquisition, the Company faced immediate and significant
4 problems stemming from the necessity to integrate the internal organization, personnel, and
5 products of Scient'x. As defendants expected, as a result of the failure of Alphatec to timely and
6 efficiently integrate the property and resources of Scient'x, while facing imminent pricing
7 pressures from its markets, the Company was unable to meet its earnings, revenue and EBITDA
8 guidance during 2010. Despite this knowledge, the defendants continued to promote the
9 misleading Projections after the Acquisition.

10 11. Defendants soon determined that the Acquisition would have to be followed quickly
11 by a cash raise, most likely via a public offering of Alphatec stock. On April 12, 2010, Alphatec
12 announced a secondary public offering wherein the Company would sell 8 million shares and
13 HealthpointCapital would also sell an additional 8 million shares. The offering, priced at \$4.75 per
14 share, closed on April 21, 2010, and allowed HealthpointCapital to dump a significant number of
15 its Alphatec shares. Indeed, with over-allotments, Alphatec sold 9.2 million shares, and
16 HealthpointCapital sold 9.2 million shares, allowing each to enjoy approximately \$44 million in
17 proceeds.

18 12. Although the Company's financial situation worsened as 2010 went on, defendants
19 continued to reiterate their false and misleading revenue and income Projections through the
20 second quarter of 2010.

21 13. On August 5, 2010, after the market close, Alphatec shocked investors by
22 announcing its actual quarterly results for the second quarter of 2010 and an extreme downward
23 revision of the misleading revenue and income Projections for the year. In response, the price of
24 Alphatec shares immediately dropped 46%, or \$2.03, to \$2.39 on volume of 13.18 million shares.

25 14. The Company's Board and executives, as well as HealthpointCapital, caused the
26 harms alleged herein, by forcing the Company to acquire Scient'x, to publish false and misleading
27 Projections, and to disseminate false Proxy Statements. As a result, HealthpointCapital and its
28 affiliated directors have reaped approximately \$44 million through the sale of the Company's stock

1 at an inflated price, and the Company has sustained substantial damages as a result of the
2 overpriced and improper Scient'x Acquisition.

3 **JURISDICTION AND VENUE**

4 15. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(2), in
5 that the Plaintiff and Defendants are citizens of different states and the matter in controversy
6 exceeds \$75,000.00, exclusive of interests and costs. This Court has supplemental jurisdiction over
7 the state law claims asserted herein pursuant to 28 U.S.C. §1367(a). This action is not a collusive
8 one to confer jurisdiction on a court of the United State which it would not otherwise have.

9 16. Further, this Court has federal question subject matter jurisdiction over this matter
10 pursuant to 28 U.S.C. § 1331, as the allegations contained herein, in part, pertain to the submission
11 and dissemination of false proxy statements in violation of §14(a).

12 17. Venue is proper in this district because a substantial portion of the transactions and
13 wrongs complained of herein, including the defendants' primary participation in the wrongful acts
14 detailed herein, occurred in this district. Several of the Individual Defendants either reside in or
15 maintain executive offices in this county, and have received substantial compensation in this
16 county by engaging in numerous activities and conducting business here, which had an effect in
17 this district.

18 **PARTIES**

19 18. Plaintiff, a citizen of the State of Illinois, is a shareholder of Alphatec, was a
20 shareholder of Alphatec at the time of the wrongdoing alleged herein, and has been a shareholder
21 of Alphatec continuously since that time.

22 19. Nominal Defendant Alphatec, through its wholly owned subsidiary, Alphatec
23 Spine, Inc., engages in the design, development, manufacture, and marketing of products for the
24 surgical treatment of spine disorders, focusing primarily on the aging spine. Alphatec is
25 incorporated in the State of Delaware, and has its principal offices located at 5818 El Camino Real,
26 Carlsbad, California 92008. It sells its products through independent distributors, direct sales
27 representatives, and sales management employees and executives in the United States, Asia, and
28 Europe. Alphatec states that "[i]n addition to its U.S. operations, the Company also markets its

1 products in over 50 international markets through its subsidiary, Scient'x SA, via a direct sales
2 force in France, Italy and the United Kingdom and via independent distributors in the rest of
3 Europe, the Middle East and Africa, South America and Latin America. In Asia and Australia, the
4 Company markets its products through its subsidiary, Alphatec Pacific, Inc, and through Scient'x's
5 distributors in China, Korea and Australia.”

6 20. Defendant HealthpointCapital, LLC is the ultimate parent of Defendant
7 HealthpointCapital Partners, L.P. and Defendant HealthpointCapital Partners II, L.P. Defendant
8 HealthpointCapital Partners, L.P., a Delaware limited partnership, currently owns approximately
9 10,877,183 Alphatec shares, and Defendant HealthpointCapital Partners II, L.P., also a Delaware
10 limited partnership, currently owns approximately 22,454,744 Alphatec shares. Together the
11 HealthpointCapital Defendants own and control approximately 38% of Alphatec's outstanding
12 shares. The HealthpointCapital Defendants are venture capital and private equity investors
13 specializing in companies producing orthopedic, spinal and dental devices and implants, and
14 maintain their executive offices at 505 Park Avenue, 12th Floor, New York, New York 10022.

15 21. Defendant Mortimer Berkowitz III (“Berkowitz”) has served as Chairman of the
16 Board of Alphatec Holdings, Inc. and Alphatec Spine since April 2007. He is currently a
17 managing member of HGP, LLC, which is the general partner of HealthpointCapital Partners, LP,
18 and President, a member of the Board of Managers and a managing director of HealthpointCapital,
19 LLC. He has held the position with HGP, LLC since its formation in August 2002, the positions of
20 managing director and member of the Board of Managers of HealthpointCapital, LLC since its
21 formation in July 2002 and the position of President of HealthpointCapital, LLC since February
22 2005. Prior to joining HealthpointCapital, LLC, Berkowitz was managing director and co-founder
23 of BPI Capital Partners, LLC, a private equity firm founded in 1990. Prior to 1990, Berkowitz
24 spent 11 years in the investment banking industry with Goldman, Sachs & Co., Lehman Brothers
25 Incorporated and Merrill Lynch & Co. He is a director of BioHorizons, Inc., a privately-held
26 dental implant company that is a HealthpointCapital portfolio company. Defendant Berkowitz is
27 and was a director of Scient'x, a French spinal implant company that is also a HealthpointCapital
28

1 portfolio company, at the time Alphatec acquired Scient'x in March 2010. Upon information and
2 belief, Defendant Berkowitz is a citizen of the State of New York.

3 22. Defendant John H. Foster ("Foster") has served as a Director of Alphatec Holdings,
4 Inc. and Alphatec Spine since March 2005. From March 2005 until April 2007, Foster served as
5 Chairman of Alphatec's Board of Directors. From December 2006 until June 2007, he served as
6 President and CEO of Alphatec Holdings, Inc. and Alphatec Spine. From October 2006 until
7 December 2006, he served as Executive Chairman of Alphatec Holdings, Inc. and Alphatec Spine.
8 Foster also served as Alphatec Holdings, Inc. and Alphatec Spine's CEO from March 2005 to
9 October 2005. He is currently a managing member of HGP, LLC, and Chairman, CEO, member of
10 the Board of Managers and a managing director of HealthpointCapital, LLC. He has held the
11 position with HGP, LLC since its formation in August 2002 and the positions with
12 HealthpointCapital, LLC since its formation in July 2002. Defendant Foster is a Scient'x director
13 and was a director of Scient'x or an affiliate of Scient'x at the time of the Scient'x Acquisition.
14 Upon information and belief, Defendant Foster is a citizen of the State of New York.

15 23. Defendant R. Ian Molson ("Molson") has served as a Director of Alphatec
16 Holdings, Inc. and Alphatec Spine since July 2005, and serves as a member of the Company's
17 Audit and Compensation Committees. Defendant Molson currently serves on the board of
18 managers of HealthpointCapital. Defendant Molson was also a director of Scient'x or an affiliate
19 of Scient'x at the time of the Scient'x Acquisition. Upon information and belief, Defendant
20 Molson is a citizen of London, England.

21 24. Defendant Stephen E. O'Neil ("O'Neil") has served as a Director of Alphatec
22 Holdings, Inc. and Alphatec Spine since July 2005, and serves as a member of the Company's
23 Audit Committee and as Chairman of the Compensation Committee. Defendant O'Neil also
24 currently serves on the board of managers of HealthpointCapital. Upon information and belief,
25 Defendant O'Neil is a citizen of the State of New York.

26 25. Defendant Stephen H. Hochschuler ("Hochschuler") has served as a Director of
27 Alphatec Holdings, Inc. and Alphatec Spine since October 2006. Hochschuler has also served as
28 Chairman of the Company's Scientific Advisory Board since October 2005. Defendant

1 Hochschuler also serves as a clinical advisor to HealthpointCapital. A HealthpointCapital press
 2 release issued on February 26, 2008, regarding Hochschuler's appointment as a Clinical Advisor,
 3 states: "Dr. Hochschuler's unparalleled understanding of medical science and advanced
 4 technologies will allow [HealthpointCapital] to better deliver to the marketplace and create value
 5 for our investors. Dr. Stephen H. Hochschuler stated, 'I am pleased to *be working more closely*
 6 *with HealthpointCapital*... I am confident this partnership will lead to important advancements in
 7 the orthopedic device industry.'"(*emphasis added*). A prospectus supplement filed with the SEC
 8 on Form 424B5 on February 10, 2010, lists Hochschuler's name under the section specifying
 9 certain members of the Alphatec Board that also serve as officers and directors of
 10 HealthpointCapital. Although Defendant Hochschuler's agreement with HealthpointCapital is not
 11 publicly available, Alphatec's proxy statement, filed with the SEC on June 28, 2010, discusses
 12 Hochschuler's role and compensation as a scientific advisor to Alphatec:

13 In 2005, we and Alphatec Spine entered into an agreement with Dr. Stephen H.
 14 Hochschuler, who became one of our directors in October 2006, pursuant to which
 15 Dr. Hochschuler agreed to serve as the Chairman of our Scientific Advisory Board.
 16 Pursuant to the agreement we pay Dr. Hochschuler for attending Scientific Advisory
 17 Board meetings and he received equity compensation in connection with the
 18 agreement. In October 2006, we and Alphatec Spine entered into a Consulting
 19 Agreement with Dr. Hochschuler. Pursuant to the terms of the agreement, we agreed
 20 to appoint Dr. Hochschuler to our and Alphatec Spine's Board of Directors until the
 21 next annual meeting of each of its stockholders or until his successor is duly
 appointed and qualified. Pursuant to the agreement, Dr. Hochschuler is required to
 provide advisory services to us related to the spinal implant industry and our
 research and development strategies. The agreement had an initial term of three
 years, and in October 2009 it automatically renewed for an additional year. The
 agreement will continue to automatically renew each year unless it is terminated
 prior to its automatic renewal date in October. In return for such advisory services,
 we paid Dr. Hochschuler cash and equity compensation. In 2009, we paid an
 aggregate of \$0.2 million to Dr. Hochschuler pursuant to these agreements.

22 Upon information and belief, Defendant Hochschuler is a citizen of the State of Arizona.

23 26. Defendant James R. Glynn ("Glynn") has served as a Director of Alphatec
 24 Holdings, Inc. and Alphatec Spine since April 2007, and serves as Chairman of the Company's
 25 Audit Committee. Defendant Glynn was a member of the special committee created to evaluate
 26 and recommend the Scient'x Acquisition. Upon information and belief, Defendant Glynn is a
 27 citizen of the State of California.

1 27. Defendant Rohit M. Desai ("Desai") has served as a Director of Alphatec Holdings,
2 Inc. and Alphatec Spine since January 2008. Upon information and belief, Defendant Desai is a
3 citizen of the State of New York.

4 28. Defendant Dirk Kuyper ("Kuyper") has served as a Director of Alphatec Holdings,
5 Inc. and Alphatec Spine since January 2008. Defendant Kuyper has also served as the President
6 and Chief Executive Officer of Alphatec Holdings, Inc. and Alphatec Spine, since June 2007.
7 Upon information and belief, Defendant Kuyper is a citizen of the State of California.

8 29. Defendant Siri S. Marshall ("Marshall") has served as a Director of Alphatec
9 Holdings, Inc. and Alphatec Spine since October 2008. Defendant Marshall was a member of the
10 special committee created to evaluate and recommend the Scient'x Acquisition. Upon information
11 and belief, Defendant Marshall is a citizen of the State of Minnesota.

12 30. Defendant Peter C. Wulff ("Wulff") has served as the Chief Financial Officer, Vice
13 President and Treasurer of Alphatec Holdings, Inc. and Alphatec Spine since June 2008. Upon
14 information and belief, Defendant Wulff is a citizen of the State of California.

15 31. Collectively, defendants Berkowitz, Foster, Molson, O'Neil, Hochschuler, Glynn,
16 Desai, Kuyper, Marshall, and Wulff are referred to herein as the "Individual Defendants."

17 **DUTIES OF THE INDIVIDUAL DEFENDANTS**

18 32. By reason of their positions as officers and/or directors of the Company and because
19 of their ability to control the business and corporate affairs of the Company, the Individual
20 Defendants owed the Company and its shareholders the fiduciary obligations of good faith, loyalty,
21 and due care, and were and are required to use their utmost ability to control and manage the
22 Company in a fair, just, honest, and equitable manner. The Individual Defendants were and are
23 required to act in furtherance of the best interests of the Company and its shareholders so as to
24 benefit all shareholders equally and not in furtherance of their personal interest or benefit. Each
25 director and officer of the Company owes to the Company and its shareholders the fiduciary duty
26 to exercise good faith and diligence in the administration of the affairs of the Company and in the
27 use and preservation of its property and assets, and the highest obligations of fair dealing.

1 33. The Individual Defendants, because of their positions of control and authority as
2 directors and/or officers of the Company, were able to and did, directly and/or indirectly, exercise
3 control over the wrongful acts complained of herein.

4 34. To discharge their duties, the Individual Defendants, as officers and directors of the
5 Company, were required to exercise reasonable and prudent supervision over the management,
6 policies, practices and controls of the Company. By virtue of such duties, the Individual
7 Defendants were required to, among other things:

- 8 • exercise good faith in ensuring that the affairs of the Company were
9 conducted in an efficient, business-like manner so as to make it possible to
provide the highest quality performance of its business;
- 10 • refrain from wasting the Company's assets;
- 11 • refrain from unduly benefiting themselves and other Company insiders at the
12 expense of the Company; and
- 13 • properly disclose all material information regarding the Company, required
14 by applicable state and federal laws and or their relevant duties, to the
Company's shareholders.

15 35. The Company's Code of Conduct, which was in effect at the time of the Individual
16 Defendants' misconduct, required them to not engage in any transactions that presented a conflict
17 of interest and to make fair, accurate, timely, and coherent disclosures. The Code of Conduct
18 required the Individual Defendants to, *inter alia*:

- 19 • demonstrate legal and ethical behavior;
- 20 • comply with all applicable laws, rules, regulations and guidelines;
- 21 • ensure that all conflicts of interest are handled in accordance with this Code
of Conduct;
- 22 • refrain from using your position in the Company or the Company's assets or
23 information for improper personal gain;
- 24 • take all actions necessary to ensure that the Company produces fair,
25 accurate, timely and coherent disclosure in all reports and documents that the
Company files with the Securities and Exchange Commission, and in its
communications to the public; and
- 26 • properly use and prevent the improper disclosure of the Company's
27 proprietary information; and
- 28 • protect the Company's assets and immediately report any suspected theft or
fraud involving the Company's assets.

1 36. The Company's Audit Committee currently has three members, defendants Glynn
 2 (Chairman), Molson and O'Neil, who owe specific duties to the Company in addition to the
 3 general duties listed above. The Audit Committee's written charter mandates that the Audit
 4 Committee members review and approve the Company's earnings press releases, guidance, and
 5 quarterly and annual financial statements, both generally and specifically with regard to the
 6 Scient'x Acquisition. The Audit Committee's charter further obligates the committee to assure
 7 compliance with all applicable laws, regulations, and corporate policy and to, *inter alia*:

- 8 • review the Corporation's annual financial statements and Form 10-K prior to
 9 the filing of the Form 10-K or prior to the release of earnings;
- 10 • review each Form 10-Q prior to its filing or prior to the release of earnings;
- 11 • review the effect of regulatory and accounting initiatives that may affect the
 12 Corporation, as well as the effect of any off-balance sheet structures and
 transactions on the Corporation's financial statements;
- 13 • report annually to the shareholders, describing the Committee's composition,
 14 responsibilities and how they were discharged, and any other information
 required by rule, including approval of non-audit services;
- 15 • review any other reports the Corporation issues that relate to Committee
 16 responsibilities;
- 17 • institute and oversee special investigations as needed;
- 18 • review the integrity of the Corporation's financial reporting processes, both
 19 internal and external. The Committee shall report regularly to and review
 20 with the full Board any issues that arise with respect to the quality or
 integrity of the Corporation's financial statements, compliance with legal or
 21 regulatory requirements, the performance and independence of the
 independent auditor, or the performance of the internal audit function;
- 22 • review significant accounting and reporting issues, including complex or
 23 unusual transactions (such as off-balance sheet structures, if any) and highly
 24 judgmental areas, and recent professional and regulatory pronouncements,
 and understand their impact on the financial statements;
- 25 • review the annual financial statements, and consider whether they are
 26 complete, consistent with information known to committee members, and
 reflect appropriate accounting principles;
- 27 • review other sections of the annual report and related regulatory filings
 28 before release and consider the accuracy and completeness of the
 information;
- review interim financial reports with management and the external auditors
 before filing with regulators, and consider whether they are complete and
 consistent with the information known to committee members;

- inquire of management and the independent auditors about significant risks or exposures facing the Corporation;
- review, with the Corporation's counsel, any legal or regulatory matter that could have a significant impact on the Corporation's financial statements;
- review and approve, prior to the Corporation's entry into any such transactions, all transactions between the Corporation and its executive officers, members of its Board, beneficial holders of more than 5% of the Corporation's securities, immediate family members of any of the foregoing persons, and any other parties whom the Board determines may be considered to be related parties; and
- when deemed necessary by the members of the Audit Committee, retain independent legal, accounting or other advisors or consultants to advise and assist the Audit Committee in carrying out its duties.

37. The Company's Compensation Committee currently has two members, defendants O'Neil (Chairman) and Molson. The Compensation Committee is required to review, approve and make recommendations regarding the Company's compensation policies, practices and procedures, to ensure that legal and fiduciary responsibilities of the Board are carried out and that such policies, practices and procedures contribute to the Company's success. The Compensation Committee also administers the Company's Amended and Restated 2005 Employee, Director and Consultant Stock Plan, and is responsible for the determination of the compensation of the CEO, defendant Kuyper. The Compensation Committee's charter obligates the committee to, *inter alia*:

- establish a compensation policy for executives designed to (i) enhance the profitability of the Company and increase stockholder value, (ii) reward executive officers for their contribution to the Company's growth and profitability, (iii) recognize individual initiative, leadership, achievement, and other contributions and (iv) provide competitive compensation that will attract and retain qualified executives;
- subject to variation where appropriate, the compensation policy for executive officers and other key employees shall include (i) base salary, which shall be set on an annual or other periodic basis, (ii) annual or other time or project based incentive compensation, which shall be awarded for the achievement of predetermined financial, project, research or other designated objectives of the Company as a whole and of the executive officers and key employees individually and (iii) long-term incentive compensation in the forms of equity participation and other awards with the goal of aligning, where appropriate, the long-term interests of executive officers and other key employees with those of the Company's stockholders and otherwise encouraging the achievement of superior results over an extended time period;
- annually review and approve corporate goals and objectives relevant to CEO compensation, evaluate the CEO's performance in light of those goals and

objectives, and recommend to the Board the CEO's compensation levels based on this evaluation;

- annually review and make recommendations to the Board with respect to compensation of directors, executive officers of the Company other than the CEO and key employees;
- approve employment contracts, severance arrangements, change in control provisions and other agreements for executive officers and key employees;
- approve and administer cash incentives and deferred compensation plans for executives (including any modification to such plans) and oversight of performance objectives and funding for executive incentive plans;
- approve and administer compensation programs involving the use of the Company's stock;
- prepare annual reports summarizing top executives' compensation levels and explaining the relationship between executive compensation and the organization's performance, as required by the SEC; and
- oversee the annual process of performance evaluations of the Company's management.

38. The Individual Defendants, because of their positions of control and authority as directors and/or officers of Alphatec, and HealthpointCapital, through its controlling ownership interest in the Company and its affiliation with a majority of the Board, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein, as well as the contents of the various public statements and SEC financial filings, issued or disseminated by the Company.

SUBSTANTIVE ALLEGATIONS

39. Alphatec is a medical technology company focused on the development and manufacture of surgical spinal implants and other devices designed to treat spinal disorders of the aging spine. Alphatec has grown swiftly over the last several years, from revenues of \$80 million in 2007, to \$101 million in 2008, to \$132 million in 2009. Despite this record, Alphatec's stock price has been erratic, and the Company has on occasion lacked growth capital.

40. Before the Scient'x Acquisition, HealthpointCapital owned approximately 39% of Alphatec's outstanding common stock, and Alphatec had been reliant on HealthpointCapital for continued capital infusions to fund its operations, *e.g.*, \$10 million of private placement financing Alphatec received from HealthpointCapital in June 2009.

1 41. In return for its capital investments, HealthpointCapital controls the direction and
2 operation of the Company, as defendants Berkowitz, Foster, Molson, O'Neil, and Hochschuler,
3 who collectively constitute a majority of the Board, all have high ranking management or
4 consulting positions with HealthpointCapital. Further, two of these individuals, defendants O'Neil
5 and Molson, constitute Alphatec's entire Compensation Committee, which controls the
6 compensation paid to Alphatec's officers, e.g., defendant Kuyper (CEO) and defendant Wulff
7 (CFO).

8 42. HealthpointCapital is a private equity firm focused primarily in research-based
9 businesses in the orthopedic and dental industries. HealthpointCapital manages approximately
10 \$750 million, and had substantial investments in Alphatec and Scient'x, having investing \$60
11 million in Alphatec and \$139 million in Scient'x. Healthpoint Capital currently controls
12 33,331,817 shares of Alphatec common stock, or approximately 38% of the Company's
13 outstanding shares.

14 43. Scient'x, like Alphatec, is engaged in the design and manufacture of spinal devices,
15 and offers these products through a network of distributors in not only the United States, but also
16 the United Kingdom, Switzerland, Germany, Italy, the Middle East, and Africa.
17 HealthpointCapital first acquired a 33% interest in Scient'x in June 2004 for approximately \$28
18 million. Then, in November 2007, HealthpointCapital acquired an additional 61% interest in
19 Scient'x for an additional \$111 million. During the time that defendants Berkowitz, Foster, and
20 Molson served the boards of directors of both Scient'x and Alphatec, HealthpointCapital acquired a
21 total of 97% of Scient'x for a total outlay of \$139 million.

22 **APPROVAL OF THE SCIENT'X ACQUISITION**

23 44. In April 2009, HealthpointCapital was looking to recover some of the money it had
24 spent to acquire Scient'x by selling Scient'x to Alphatec, and representatives of both Alphatec and
25 Scient'x began discussing a possible acquisition of Scient'x. At that time, both Alphatec and
26 Scient'x were losing money. Alphatec's losses were diminishing, however, and the Company
27 expected to post a profit in 2010, while Scient'x lost approximately \$10.2 million in the first nine
28 months of 2009 and projected a net loss of \$17.6 million for fiscal year 2010.

1 45. HealthpointCapital and the interested individuals who comprised a majority of the
2 Board (defendants Berkowitz, Foster, O'Neil, Molson, and Hochschuler) attempted to give the
3 impression of arm's-length negotiations by establishing a special committee of two Alphatec
4 directors unaffiliated with HealthpointCapital (the "Special Committee"), consisting of defendants
5 Glynn and Marshall, to negotiate on behalf of Alphatec. The Board asserted that this Special
6 Committee would lead an independent evaluation, investigation, and negotiation of any acquisition
7 of Scient'x.

8 46. After formation of the Special Committee to evaluate and investigate the Scient'x
9 Acquisition, HealthpointCapital determined that Defendant Berkowitz should negotiate the
10 transaction on behalf of Scient'x, despite serving as Alphatec's Chairman of the Board, and having
11 extensive inside non-public knowledge about both companies. The Special Committee, however,
12 did not benefit or negotiate from a similar position. Despite this disparity, over the next six months
13 the Special Committee and Berkowitz negotiated a potential acquisition of Scient'x.

14 47. On September 24, 2009, the Special Committee and Berkowitz's negotiations
15 culminated in the determination of a price that Alphatec would pay HealthpointCapital for the
16 Acquisition of Scient'x. However, on December 9, 2009, Defendant Berkowitz informed
17 Defendant Kuyper that HealthpointCapital had received a proposal to acquire Scient'x from a third
18 party, and backed out of the negotiations with Alphatec.

19 48. On December 14, 2009, Defendant Berkowitz requested that the Special Committee
20 hold its offer open through January 8, 2010, in order to allow the third party bidder to complete
21 diligence and negotiate material terms for the acquisition of Scient'x. Defendant Berkowitz,
22 however, refused to share the specific terms of the third party's offer with the Special Committee,
23 despite the long history of negotiations that had occurred between them. As a result, the Special
24 Committee advised defendants Berkowitz and HealthpointCapital that the offer would be held open
25 only through December 16, 2009.

26 49. In response to this deadline, HealthpointCapital circumvented the Special
27 Committee by communicating directly with other directors of the Company. Eventually, as a result
28

1 of pressure from the other Board members, the Special Committee continued negotiations with
2 Defendant Berkowitz.

3 50. On December 16 and 17, 2009, the Special Committee and HealthpointCapital
4 agreed to an increase in the consideration for Scient'x to 24 million shares, and after final revisions
5 to the agreement, the Special Committee recommended approval of the Scient'x Acquisition. This
6 recommendation would not have occurred absent the undue influence of HealthpointCapital and
7 the interested Board members. Eventually, on December 24, 2009, the Board recommended that
8 the Company's shareholders vote for the Scient'x Acquisition based solely on this improper
9 recommendation of the Special Committee.

10 51. In effect, HealthpointCapital used its status as the Company's largest shareholder,
11 with a majority of the Board being interested in the successful outcome, to effectuate the
12 completion of the Scient'x Acquisition in order to provide a means to compensate itself for its
13 failing investment.

14 52. Because a majority of the Company's directors had a direct financial interest in the
15 Scient'x Acquisition by having high ranking management or consulting positions with Healthpoint
16 Capital, and because these directors dominated and controlled the Board of Alphatec, this
17 transaction is not protected by the business judgment rule and instead must be considered under the
18 entire fairness standard, which it cannot meet, as discussed herein.

19 53. Considering that Scient'x had exhibited almost no revenue growth in the first nine
20 months of 2009, and had lost \$10.2 million during that period and projected a net loss of \$17.6
21 million for fiscal year 2010, the defendants overpaid to acquire Scient'x, which was not worth the
22 24 million shares of stock valued at approximately \$120 million that Alphatec paid for it.

23 54. Additionally, the process by which the Special Committee conducted its
24 consideration of the Acquisition and the process by which the shareholders approved the
25 Acquisition were tainted by defendants' misconduct. HealthpointCapital and the Company's
26 interested directors put undue pressure on the Special Committee and unduly interfered with the
27 Acquisition process. Further, in seeking the required shareholder approval, the Individual
28

1 Defendants disseminated false and misleading information via Projections and Proxy Statements,
2 as discussed further below.

3 55. Because the Individual Defendants cannot demonstrate either that they paid a fair
4 price for Scient'x or that there was fair dealing in the process of approving the Acquisition, the
5 transaction does not meet the entire fairness standard.

6 **THE FALSE AND MISLEADING STATEMENTS AND FALSE 2010 PROXY**
7 **STATEMENTS LEADING TO THE SHAREHOLDER VOTE**

8 56. In addition to the Board's and Special Committee's approval of the Acquisition,
9 HealthpointCapital also needed to obtain approval from a majority of the Company's shareholders
10 to issue new stock to complete the Acquisition. HealthpointCapital and the Individual Defendants
11 accomplished this by making false and misleading statements about the Company's financial
12 condition and prospects and filing and disseminating to shareholders false Proxy Statements that
13 misrepresented and omitted material information regarding the transaction.

14 57. On December 17, 2009, Alphatec issued a press release stating that the Company
15 had entered into an agreement to acquire Scient'x in an all stock transaction, and that to pay for this
16 transaction the Company would need to issue 24 million shares of its stock. In this press release
17 the Board asserted that an independent Special Committee had evaluated and approved the
18 acquisition of Scient'x.

19 58. HealthpointCapital held approximately 39% of the Company's stock, and because a
20 simple majority vote was required to issue the stock, the Individual Defendants and
21 HealthpointCapital only needed to obtain an additional 11% of the shareholders to approve the
22 Scient'x Acquisition. To obtain this approval, the Individual Defendants provided false and
23 misleading Projections that significantly overstated the Company's ability to generate revenue and
24 successfully integrate Scient'x into the Company. On December 17, 2009, Defendants Kuyper and
25 Wulff, with the specific review and approval of Audit Committee members Glynn, Molsen, and
26 O'Neil, stated that after the Acquisition was completed, the Company would generate a 60%
27 increase in revenue. This 60% growth was approximately double the growth that Alphatec
28 experienced in 2008 and 2009, which was 26.6% and 30.4%, respectively. The Individual

1 Defendants stated in the press release that they expected "2010 pro form full-year revenues to be in
2 a range of \$220 million to \$225 million, and pro forma full-year 2010 adjusted EBITDA to be in a
3 range of \$32 million to \$35 million." The press release also asserted a claim of EBITDA growth as
4 high as 58% for 2010, during a time when the Company was significantly increasing costs to
5 integrate Scient'x, making its ability to meet those projections exceedingly improbable. The press
6 release specifically stated that:

7 Alphatec Holdings, Inc. (Nasdaq:ATEC), the parent company of Alphatec Spine,
8 Inc., a medical device company that designs, develops, manufactures and markets
9 products for the surgical treatment of spine disorders, with a focus on treating
10 conditions affecting the aging spine, announced today that it has entered into a
definitive agreement to acquire Scient'x Groupe SAS, a spinal implant company
headquartered in France.

11 The transaction is structured as an all stock transaction such that 100% of
12 outstanding Scient'x stock will be exchanged pursuant to a fixed ratio for 24 million
13 shares of the Company's common stock. On a pro forma basis, current Alphatec
14 shareholders will own approximately 69% of the combined company and
15 approximately 31% will be held by current Scient'x shareholders. The transaction is
16 currently expected to close by the end of the first quarter of 2010 and is subject to
17 the approval of the Company's shareholders. Subject to the closing of the
18 transaction, the Company expects 2010 pro forma full-year revenues to be in a range
of \$220 million to \$225 million, and pro forma full-year 2010 adjusted EBITDA to
be in a range of \$32 million to \$35 million. The transaction is expected to be neutral
to slightly positive to 2010 EPS and accretive to 2011 EPS, excluding amortization
of intangible assets, transaction expenses and related restructuring charges. The
Company has absorbed transaction-related costs that had a negative impact to EPS
in the third quarter and are expected to negatively impact previously issued EPS
guidance for the fourth quarter of 2009. The Company also expects to absorb
additional transaction-related expenses in the first quarter of 2010.

19 The transaction was unanimously approved by a Special Committee of independent
20 members of the Company's Board of Directors. Following such approval by the
21 Special Committee, the Company's Board of Directors unanimously approved the
acquisition agreement.

22 59. As a result of the Company's announcements, the Company's shares rose 8%. In
23 reality, the revenue and income Projections contained in the press release were designed to offset
24 or omit the truth behind the deal's negatives in order to increase interest in the Company's stock and
25 a possible future public offering.

26 60. Fundamental information regarding the propriety of the Acquisition that was
27 omitted from the Projections included the fact that Alphatec and Scient'x were both losing money.
28 For the nine months ending Sept. 30, 2009, Alphatec lost \$11.97 million, and for that same period,

1 Scient'x had lost \$10.2 million and was projecting a further net loss of \$17.6 million in 2010.
 2 Although Alphatec was projecting net income for 2010, at the time of the Acquisition, Alphatec
 3 faced the likelihood that any integration of Scient'x would drain its available cash and limit its
 4 planned crossover to profitability.

5 61. The Projections, at or about the time of the Acquisition, were unreasonable and
 6 reckless because the Individual Defendants knew, but failed to disclose, that: (a) pricing pressures
 7 in the U.S. and Europe were steadily increasing, and had been increasing since the fall of 2009,
 8 especially in Alphatec's important Florida market; (b) Alphatec planned to eliminate an Asian
 9 distributor, which produced \$12 million in annual revenues, without any realistic plan to replace
 10 those lost revenues; (c) Scient'x, under the best of circumstances, had exhibited almost no revenue
 11 growth in the first nine months of 2009, and its ability to market and sell at even the same level in
 12 2010 would be disrupted by any acquisition; and (d) integrating the two companies would affect
 13 2010 revenues and earnings in a negative manner.

14 62. The Company reiterated these misleading Projections in two separate Proxy
 15 Statements filed with the SEC on December 18, 2009, one stating, in part, that:

16 The transaction was unanimously approved by a Special Committee of independent
 17 members of the board. Following such approval by the Special Committee, the
 18 entire board unanimously approved the transaction.

19 Represents pro-forma combined \$180-\$182M 2009 revenue, 25-30% growth y/y

20 Pro forma 2010 revenue estimated to reach \$220-\$225M; \$32-\$35M adjusted
 21 EBITDA (12 month annualized)

22 The other Proxy Statement stated, in part, that:

23 Subject to the closing of the transaction, the Company expects 2010 pro forma full-
 24 year revenues to be in a range of \$220 million to \$225 million, and pro forma full-
 25 year 2010 adjusted EBITDA to be in a range of \$32 million to \$35 million.

26 The [Scient'x] transaction was unanimously approved by a Special Committee of
 27 independent members of the Company's Board of Directors. Following such
 28 approval by the Special Committee, the Company's Board of Directors unanimously
 approved the acquisition agreement.

The Company believes that the strategic merit of the combined business includes the
 following benefits to its shareholders:

- Increases scale and global presence in all major geographic markets

- 1 • Provides cross-selling opportunities in major markets to leverage future growth across core spine products and Aging Spine products
- 2 • Strengthens and expands the Company's product portfolio with differentiated products in all segments
- 3 • Enhances the Company's ability to educate, train and service its spine surgeon customers
- 4 • Provides cost synergies in distribution, marketing and administration infrastructure
- 5 • Diversifies potential future U.S. healthcare reform and regulatory risks

8 "We believe that Scient'x is a perfect complementary strategic fit for Alphatec Spine," stated Dirk Kuyper, Alphatec Spine's President and Chief Executive Officer. Mr. Kuyper continued, "Besides the significant cost and revenue synergies the acquisition offers, Alphatec Spine will now have the opportunity to reach 50 international markets with our aging spine and core fusion technologies. This transaction moves us into position to be able to become one of the top global spine companies."

12 "I am pleased to have the opportunity to work closely with Oliver Burckhardt again, following our time together at Aesculap Inc. He will be instrumental in overseeing our international sales efforts and will lead the strategic marketing direction of the combined company. We believe that the combination of Alphatec Spine and Scient'x creates a complete and broad product portfolio with differentiated products addressing underserved markets with disruptive technologies," continued Mr. Kuyper.

16 63. On December 22, 2009, the Company filed with the SEC another Proxy Statement, reiterating, in part, that:

18 The Company's board of directors formed a special committee of disinterested directors to evaluate and, if appropriate, negotiate the transaction with Scient'x, and such special committee unanimously recommended that the board of directors and stockholders approve the Share Purchase Agreement and the issuance of the Company's shares contemplated therein. Following such recommendation by the special committee, the Company's board of directors unanimously approved the Share Purchase Agreement.

22 64. Finally, on February 12, 2010, the Company filed with the SEC its definitive Proxy Statement, recommending that the shareholders vote in favor of the issuance of stock to complete the Scient'x Acquisition, and again asserting that the Special Committee was disinterested. Additionally, the Board improperly claimed that the Scient'x Acquisition was in the best interest of the shareholders, specifically stating that:

27 Upon the unanimous recommendation of a special committee of the disinterested directors, our board of directors has unanimously approved the proposal referred to above and concluded that it is advisable, fair to, and in the best interests of our

1 stockholders unaffiliated with HealthpointCapital. The special committee and our
2 board of directors unanimously recommend that our stockholders vote "FOR" the
proposal referred to above.

3 In addition, the Proxy Statement incorporated by reference the false earnings and revenue guidance
4 previously provided by defendants Kuyper and Wulff, with the approval of the Board.

5 65. On February 23, 2010, the Company announced its fourth quarter and full year 2009
6 revenue and financial results, which affirmed the Projections that the Individual Defendants
7 provided when they announced the Scient'x Acquisition. This press release stated, in part:

8 As previously announced, the Scient'x transaction is currently expected to close by
9 the end of the first quarter of 2010 and is subject to the approval of the Company's
shareholders. The Company has absorbed transaction-related costs that had a
10 negative impact to GAAP EPS in the third and fourth quarters of 2009. The
Company also expects to absorb additional transaction-related expenses in the first
11 quarter of 2010.

12 66. Also on February 23, 2010, defendants Wulff and Kuyper held a conference call to
13 discuss the substance of the Scient'x Acquisition. Defendant Kuyper stated, in pertinent part, that:

14 At this point, I'd like to provide financial guidance for the first quarter 2010 and to
reaffirm our guidance for pro forma financials for the full year 2010.

15 We expect first quarter 2010 revenues of \$38 million and an adjusted EBITDA
16 margin of at least 15%. The financial guidance for the first quarter 2010 reflects
operating results prior to the acquisition of Scient'x.

17 We are reaffirming 2010 financial guidance from December 17, 2009, which we
18 provided when we announced the Scient'x acquisition. We anticipate annualized pro
forma revenue of \$220 million to \$225 million and \$32 to \$35 million in annualized
19 adjusted EBITDA and positive EPS for full year 2010 excluding amortization of
intangible assets, transaction expenses, and related restructuring charges.

20 **THE COMPANY'S APRIL 2010 SECONDARY PUBLIC OFFERING**

21 67. The Company's completed acquisition of Scient'x, which closed in March 2010,
22 ultimately increased HealthpointCapital's control and ownership of the Company from 39% to
23 56%. As a result of the Acquisition, the Company faced immediate and significant problems
24 stemming from the necessity to integrate the internal organization, personnel, and products of
25 Scient'x while facing imminent pricing pressures from its markets. Defendants knew that the
26 Company would be unable to meet its earnings, revenue and EBITDA guidance for 2010. Despite
27 this knowledge, the defendants continued to promote the misleading Projections after the
28 Acquisition was completed.

1 68. Because Alphatec had acquired a company that was losing money,
2 HealthpointCapital and its affiliated directors decided to conduct a secondary public offering in
3 April 2010 (the "April 2010 Offering") to monetize their investment in Scient'x. The Company
4 announced the April 2010 Offering on April 12, 2010, wherein the Company and
5 HealthpointCapital would each sell an additional 8 million shares. The offering was priced at
6 \$4.75 and would close on April 21, 2010.

7 69. The April 2010 Offering allowed HealthpointCapital and its affiliated directors to
8 dump a significant number of Alphatec shares based on their knowledge of material non-public
9 information. HealthpointCapital sold, with over-allotments, a total of 9.2 million shares,
10 generating illicit proceeds of approximately \$44 million. HealthpointCapital had not previously
11 disposed of any of the Company's stock since the Company's initial public offering in June 2006.

12 70. On August 5, 2010, after the market close, Alphatec shocked investors by
13 announcing the following in a press release:

14 Revising full year 2010 financial guidance, the Company anticipates pro forma
15 combined annual revenues of \$188 million to \$193 million, \$21 million to \$24
16 million in pro forma combined adjusted EBITDA and positive non-GAAP EPS for
17 the full year 2010, excluding acquisition-related expenses. The Company is issuing
18 this guidance to reflect the 2010 pro forma combined effect on a 12-month basis, as
19 if the Scient'x acquisition closed January 1, 2010. The revised annual pro forma
20 revenue guidance reflects annual growth of 10% to 13% over pro forma 2009
21 revenues of \$170.8 million.

22 On a GAAP reporting basis, the Company expects full year 2010 consolidated
23 revenues in the range of \$177 million to \$182 million, adjusted EBITDA to be in the
24 range of \$21 million to \$24 million, and positive non-GAAP EPS, excluding
25 acquisition-related expenses. The GAAP reporting basis guidance reflects the actual
26 closing of the Scient'x acquisition at the end of March 2010 and the inclusion of
27 Scient'x's actual operating results, effective April 1, 2010, into the Company's
28 consolidated statement of operations and consolidated statement of cash flows. The
GAAP reporting basis guidance also excludes IMC revenues of \$3.1 million from
first quarter 2010 as IMC was divested in the second quarter of 2010 and reported as
discontinued operations.

As previously announced, the Scient'x transaction closed on March 26, 2010. The
Company has absorbed acquisition-related expenses that had a negative impact to
GAAP EPS in the first and second quarters of 2010 and expects to absorb additional
acquisition-related expenses in the third and fourth quarters of 2010.

71. In response to the Company's August 5, 2010 announcements, Alphatec shares
immediately dropped 46%, or \$2.03, to \$2.39, on volume of 13.18 million shares. Thus, Alphatec

1 shares were suddenly worth approximately half the price at which HealthpointCapital dumped its
2 shares in the April 2010 Offering.

3 **DERIVATIVE AND DEMAND EXCUSED ALLEGATIONS**

4 72. Plaintiff is a shareholder of Nominal Defendant Alphatec, was a shareholder of
5 Alphatec at the time of the wrongdoing alleged herein, and has been a shareholder of Alphatec
6 continuously since that time.

7 73. Plaintiff will adequately and fairly represent the interests of the Company and its
8 shareholders in enforcing and prosecuting its rights.

9 74. Plaintiff did not make a pre-suit demand on the Board, because the Board is
10 incapable of making an independent and disinterested decision to institute and vigorously prosecute
11 this action, as set forth below.

12 75. At the time when the illicit misconduct and breaches of fiduciary occurred, and
13 through the present date, the Company's Board consisted of defendants Berkowitz, Foster, Molson,
14 O'Neil, Hochschuler, Glynn, Desai, Kuyper, and Marshall. As a result of the facts set forth in this
15 Complaint, demand on the Board is excused because a majority of the Board (defendants
16 Berkowitz, Foster, Molson, O'Neil, and Hochschuler) is affiliated with HealthpointCapital, the
17 Company's controlling shareholder, and is directly interested in the transactions complained of
18 herein, including the Scient'x Acquisition and subsequent April 2010 Offering of Alphatec
19 common stock.

20 76. The Acquisition is not protected by the business judgment rule, but rather must be
21 evaluated pursuant to the entire fairness standard, which, for the reasons discussed herein,
22 defendants cannot meet. Furthermore, the entire Board approved and disseminated the false Proxy
23 Statements, which is likewise not protected by the business judgment rule and subjects all of the
24 directors to a substantial likelihood of liability for breaching their fiduciary duties of loyalty and
25 good faith and violating §14(a).

26 77. In addition, defendants Berkowitz, Foster, Molson, O'Neil, and Hochschuler are
27 directly interested in, and face a substantial likelihood of liability for, their use of their knowledge
28 of material non-public information about the Company and its financial performance and prospects

1 to sell 9.2 million of HealthpointCapital's shares of Alphatec stock in the April 2010 Offering,
 2 which is a breach of their fiduciary duties of loyalty and good faith and is not protected by the
 3 business judgment rule.

4 78. As well, defendant Kuyper is not independent because the Company's two
 5 Compensation Committee members (defendants O'Neil and Molson), who are directly interested in
 6 the transactions complained of herein, control his compensation as Alphatec's CEO, which,
 7 according to the Company's Proxy Statements, amounted to a total of \$871,444 in 2009.

8 **COUNT I**

9 **AGAINST THE INDIVIDUAL DEFENDANTS FOR BREACH OF FIDUCIARY DUTIES**
 10 **OF LOYALTY AND GOOD FAITH FOR ENGAGING IN THE SCIENT'X ACQUISITION**
 11 **ON UNFAIR TERMS AND PURSUANT TO AN UNFAIR PRICE**

12 79. Plaintiff incorporates by reference and realleges each and every allegation set forth
 13 above, as though fully set forth herein.

14 80. As alleged in detail herein, each of the Individual Defendants, by reason of their
 15 positions as fiduciaries of the Company, owed to the Company the duties of undivided loyalty and
 16 good faith, and had a fiduciary duty to, among other things, act in furtherance of the best interests
 17 of the Company and its shareholders, so as to benefit all shareholders equally and not in
 18 furtherance of their personal interest or benefit.

19 81. The Individual Defendants breached their fiduciary duties of loyalty and good faith
 20 by engaging and approving of the Scient'x Acquisition on unfair terms and pursuant to an unfair
 21 price, as complained of herein, acts which were not, and could not have been, exercises of good
 22 faith business judgment. Rather, such acts were intended to, and did, unduly benefit Defendant
 23 HealthpointCapital, and the HealthpointCapital-affiliated directors and parties, at the expense of
 24 the Company, and were not entirely fair to the Company.

25 82. As a direct and proximate result of the Individual Defendants' foregoing breaches of
 26 fiduciary duties, the Company has sustained substantial damages, including, but not limited to, the
 27 overpayment for, and the costs and expenses incurred in connection with, the Acquisition.
 28

COUNT II

**AGAINST THE INDIVIDUAL DEFENDANTS FOR BREACH OF FIDUCIARY DUTIES
OF LOYALTY AND GOOD FAITH FOR DISSEMINATING FALSE AND MISLEADING
INFORMATION VIA PROJECTIONS AND PROXY STATEMENTS**

83. Plaintiffs incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

84. The Individual Defendants, by reason of their positions as fiduciaries of the Company, owed to the Company the duties of undivided loyalty, good faith, and truthful disclosure, and had a duty to act in the best interest of the Company's shareholders and to disclose to the shareholders accurate and truthful information, as well as all material facts concerning the nature of the Scient'x Acquisition.

85. As alleged herein, the Individual Defendants breached their fiduciary duties of loyalty and good faith by knowingly causing the Company to disseminate false and misleading information via the Company's Projections and Proxy Statements, as alleged herein.

86. As a direct and proximate result of the Individual Defendants' breaches of their fiduciary duties associated with their dissemination of false and misleading information via the Company's Projections and Proxy Statements, the Company has sustained substantial damages, as alleged herein.

COUNT III

**AGAINST THE INDIVIDUAL DEFENDANTS FOR VIOLATION OF SECTION 14(a)
FOR DISSEMINATING FALSE AND MISLEADING PROXY STATEMENTS**

87. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

88. Rule 14-A-9, promulgated pursuant to §14(a), provides that no proxy statement shall contain "any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading." 17 C.F.R. § 240.14-A-9.

COUNT VI

**AGAINST THE HEALTHPOINTCAPITAL DEFENDANTS
FOR UNJUST ENRICHMENT**

102. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

103. The HealthpointCapital Defendants were unjustly enriched by their receipt of proceeds from the illegal sale of Alphatec common stock, as alleged herein, and it would be unconscionable to allow them to retain the benefits thereof.

104. To remedy the HealthpointCapital Defendants' unjust enrichment, the Court should order them to disgorge to the Company all proceeds derived from the illegal sale of Alphatec common stock, as alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

- A. Against all defendants and in favor of the Company for the amount of damages sustained by the Company as a result of their misconduct;
- B. Imposing for the benefit of the Company a constructive trust any and all proceeds that defendants Berkowitz, Foster, Molson, O'Neil and Hochschuler and/or HealthpointCapital obtained as a result of the sale of Alphatec common stock in the April 2010 Offering;
- C. Ordering the HealthpointCapital Defendants to disgorge to the Company any and all of the proceeds they obtained as a result of the sale of Alphatec common stock in the April 2010 Offering;
- D. Granting appropriate equitable relief to remedy the Individual Defendants' breaches of fiduciary duties;
- E. Awarding to Plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and
- F. Granting such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury

1 DATED: December 2, 2010

Respectfully submitted,

2
3 /s/ Eric L. Zagar
4 BARROWAY TOPAZ KESSLER
5 MELTZER & CHECK, LLP
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19 *Attorneys for Plaintiff*
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JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Marchell Norris, Derivatively on Behalf of Alphatec Holdings, Inc.	DEFENDANTS See Exhibit A
(b) County of Residence of First Listed Plaintiff <u>Lake County</u> (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)
(c) Attorney's (Firm Name, Address, and Telephone Number) Barroway Topaz Kessler Meltzer and Check, LLP, 280 King of Prussia Road, Radnor, PA 19087, 610-667-7706	NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known) <div style="text-align: right; font-size: 1.2em; font-weight: bold;">'10CV2477 LAB POR</div>

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table style="width: 100%;"> <tr> <th style="text-align: left;">PTF</th> <th style="text-align: left;">DEF</th> <th style="text-align: left;">PTF</th> <th style="text-align: left;">DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1 <input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input checked="" type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5 <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> </tr> </table>	PTF	DEF	PTF	DEF	Citizen of This State	<input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4	Citizen of Another State	<input checked="" type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6
PTF	DEF	PTF	DEF														
Citizen of This State	<input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4														
Citizen of Another State	<input checked="" type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6														

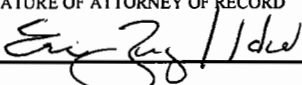
IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input checked="" type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)					
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation
					Appeal to District Judge from Magistrate Judgment <input type="checkbox"/> 7

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>28 U.S.C. Section 1332(a)(2)</u> Brief description of cause: <u>Breach of Fiduciary Duty</u>
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE <u>Roger Benitez</u>	DOCKET NUMBER <u>3:10cv1673</u>
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DATE <u>12/02/2010</u>	SIGNATURE OF ATTORNEY OF RECORD 
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FOR OFFICE USE ONLY	RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE
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EXHIBIT "A" TO CIVIL COVER SHEET

MORTIMER BERKOWITZ, III, JOHN H. FOSTER, R. IAN MOLSON, STEPHEN E. O'NEIL, STEPHEN H. HOCHSCHULER, JAMES R. GLYNN, ROHIT M. DESAI, DIRK KUYPER, SIRI S. MARSHALL, PETER C. WULFF, HEALTHPOINTCAPITAL, LLC, HEALTHPOINTCAPITAL PARTNERS, LP, and HEALTHPOINTCAPITAL PARTNERS II, LP